

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE**

WRIT PETITION NO. 4376 OF 2007

Atreya Promoters & Builders Petitioner

versus

State of Maharashtra & anr..... Respondent.

Mr. Subhash Jha i/b Law Global for the petitioner
Shri P.S.Dani & M.B. Patil for respondent no.2.
Mr. R.M.Patne AGP for Respondent no.1.

**CORAM; A.P. DESHPANDE, J.
DATED; 29TH OCTOBER, 2007**

P.C.;

1. This petition has to be dismissed solely on the ground that it suffers from 'suppresio veri and suggestio falsi'. This petition takes an exception to an order passed by the Divisional Joint Registrar dated 21-5-2007 rejecting an application seeing condonation of delay in filing a Revision Application.

2. The Asstt. Registrar, Co-operative Societies issued a certificate under section 101 of the Maharashtra Co-operative Societies Act in favour of the respondent no.1 bank. The certificate was issued on 8-5-2003. Aggrieved by the same, the present petitioner filed a revision application bearing No. 310/03 on 13-5-2003 before the revisional authority. In the said revision, an application for stay of the

execution of the certificate was filed. As the revisional court declined to grant stay, a writ petition was carried to this court bearing No. 3688/03. The writ petition came to be disposed of in consent terms. In the consent terms the recovery certificate was confirmed. After the writ petition came to be disposed of in consent terms, the revision application No.310/03 was withdrawn by the petitioner. Strangely enough after lapse of about four years, yet again a revision application came to be filed calling in question, the legality and validity of the recovery certificate issued on 8-5-2003. In the revision filed for the second time before the same authority, there was no mention of the revision being filed earlier in point of time and its withdrawal. What transpired before the High court in the writ petition, which came to be disposed of in consent terms, was also not mentioned. It is thus obvious that the revision filed for the second time calling in question the same certificate after withdrawal of the first revision, was wholly misconceived.

2. The condonation of delay was sought in filing of the second revision by contending that the petitioner was not aware of issuance of recovery certificate in the year 2003. It was averred in the condonation of delay application that for the first time the

petitioner came to know about the issuance of recovery certificate, on 3-1-2007. It is very disturbing that none of the relevant facts narrated hereinabove are even mentioned in the writ petition. The revisional authority has rightly found that the reason assigned for the so called delay in filing the revision (for the second time) is not established. The very fact that the petitioner did file revision on 13-5-2003 reveals that the petitioner was fully aware of the issuance of the recovery certificate. Hence the reason sought to be assigned in the application for condonation of delay was false to the knowledge of the petitioner. To say the least in the facts of the present case, I have no iota of doubt in concluding that the petitioner is guilty of abuse of the process of court. Non-disclosure of material facts is aimed at suggesting falsehood and there is absolutely no merit in the writ petition and the same deserves to be summarily dismissed. The petitioner has tried to clarify and/or justify the circumstances, wherein the revision came to be filed for the second time. The revision filed for the second time, after the writ petition was disposed of in consent terms speaks volumes about the conduct of the petitioner, which need to be deprecated. Pursuant to the Consent Terms, various cheques issued by the petitioner in favour of the respondent also bounced. What is very shocking is

that during the course of execution, the petitioner gave pay order of Dhanalaxmi Agricultural Primary Co-operative Bank Ltd. indi Branch, Bijapur Dist. (Karnataka) for Rs. 15 lacs. When the pay order was sought to be encashed it transpired that the said Bank was closed.

3. Prima facie it is found that the petitioner's conduct is fradulant and it has no respect for truth. Having accepted the liability under the certificate by filing consent terms in the High Court and after withdrawaing the revision, I fail to see what justification could be there to file yet again a revision for the second time. The above referred facts are revealed from the say filed by the respondent/Bank dated 15-1-2007 in the revision.

4. Hence the writ petition stands dismissed summarily with costs quantified in the sum of Rs.25,000/- to be paid by the petitioner to the respondent no.1 bank within four weeks from today.

5. At this stage the learned counsel for the petitioner seeks continuance of the statusquo order. The prayer is rejected.

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